

How to Request Ministerial Intervention

This factsheet explains how to write a letter to request Ministerial Intervention under either section 417 or section 48B of the *Migration Act 1958* (the 'Act').

Please note that this is not a complete list of Ministerial Intervention Powers that may apply to a person. Get legal advice before making a request.

Type of Request	When can you make this request	How can the request be made?
<p><u>Section 417</u></p> <p>Asking the Minister for Immigration, Citizenship and Multicultural Affairs (the 'Minister') to grant a visa due to unique or exceptional circumstances.</p>	<p>If you are refused by the Administrative Appeals Tribunal (AAT) Migration and Refugee Division.</p> <p>This excludes Excluding IAA fast track cases.</p>	<p>The request must be made in writing to the Minister.</p> <p>It must be made separately to any other request to the Minister e.g. you cannot combine this request with a s 48B request.</p>
<p><u>Section 48B</u></p> <p>Asking the Minister for permission to make another protection visa application due to exception circumstances that justify considering new information or significant changes in circumstances after protection visa refusal decision.</p>	<p>If you have been refused a protection visa.</p> <ul style="list-style-type: none"> • Fast track or non-fast track • If the protection visa was refused in the last 6 months, the request will not be considered for referral to Minister unless: <ul style="list-style-type: none"> ○ Making gender-based claims where there are exceptional reasons why those claims were not raised earlier; or ○ From Afghanistan, Iraq, Syria, Libya, Yemen, South Sudan or Somalia. ○ There is a risk of the death penalty for the person in the USA, Japan or South Korea. 	<p>In writing to the Minister.</p> <p>It must be made separately to any other request e.g. cannot be combined with s 417 request.</p>

How to Request Ministerial Intervention

	<ul style="list-style-type: none"> The request can be made after merits review by the AAT or IAA have been exhausted or if the deadline to apply for AAT review was missed. 	
<p><u>Section 195A</u></p> <p>Asking the Minister to grant visa to detainee in the public interest.</p>	A person in immigration detention.	<p>Must be made by a Departmental officer.</p> <p>Requests should go to a person's Immigration Caseworker in detention.</p>
<p><u>Section 197AB</u></p> <p>Asking the Minister to decide that the person reside at a specified place in the community rather than being held in a detention centre.</p>	A person in immigration detention.	<p>Must be made by a Departmental officer.</p> <p>Requests should go to a person's Immigration Caseworker in detention.</p>
<p><u>Section 198AE</u></p> <p>Asking the Minister for an exemption from being transferred to offshore processing.</p>	A person subject to transfer to Nauru or PNG.	Get legal advice.

How to Request Ministerial Intervention

Section 417- A request following negative AAT decision

Section 417 of the Act gives the Minister the power to grant a visa to a person refused by the AAT if the Minister thinks it is in the “public interest” to grant them a visa.

It is not possible to make this request unless you have had a negative decision by the AAT.

If you are a fast track applicant, you are not able to make this kind of Ministerial Intervention request. If you are in the community, your option may be a request under s 48B. If you are in detention, you also have the option of a request under s 195A.

The Minister will only consider cases that have ‘unique or exceptional’ circumstances.

Important points to note:

- The Minister does not have to consider whether or not to intervene in your case.
- The Minister only intervenes in a small number of cases each year.
- The Minister’s decision cannot be reviewed or appealed.
- If you have an Australian partner you might be able to apply for a Partner visa instead.
- The Minister will not consider requests which raise claims only relating to Australia’s protection obligations.
- You should be lawful when making this request. You should hold or apply for a Bridging Visa. People in detention can make this request.
- Second or repeat requests are only considered in limited circumstances.
- Please consider what other options you have, because this is often the last step in the legal process.

How to Request Ministerial Intervention

Unique and Exceptional circumstances

What are 'unique and exceptional' circumstances?

Non-exhaustive examples:

Types of unique or exceptional circumstances	Examples of the different types of documents that could support claims (the types of documents will vary depending on your circumstances)
<p>Strong compassionate circumstances that, if not recognised, would result in serious, ongoing and irreversible harm and continuing hardship to an Australian citizen or an Australian family unit (where at least one member of the family is an Australian citizen or Australian permanent resident).</p> <p>Australia's obligations under the Convention on the Rights of the Child. Would your removal from Australia not be in the best interests of a child?</p>	<p>Documents to support your claims:</p> <ul style="list-style-type: none">• A statutory declaration outlining how the Australian citizen or permanent resident will suffer ongoing and irreversible harm and continuing hardship, and any reasons why you cannot apply for a visa from outside Australia;• Medical/specialist reports where relevant to your claims;• Medical/specialist reports confirming an Australian citizen or permanent resident needs ongoing and continuous care that is not otherwise available and evidence of the efforts you or your family have made to source care from community and other support services;• Supporting letter from the Australian citizen or permanent resident to whom you are providing support, or from their family members, including evidence of your relationship to them.<ul style="list-style-type: none">◦ Such as a birth certificate, marriage certificate, joint utility bills, joint saving accounts.• Child's birth certificate, any family law orders, child support payment documents;• A statutory declaration from the child's parent, teacher, relatives or others explaining the impact on the child if you are removed.
<p>Compassionate circumstances regarding your age, health or psychological state, that if not recognised, would result in serious, ongoing and irreversible harm and continuing hardship.</p>	<p>Documents to support claims that you would suffer serious, ongoing and irreversible harm and continuing hardship if you are returned to your country of origin:</p> <ul style="list-style-type: none">• Evidence of your age (birth certificate or passport)• Evidence of your health status (recent medical/specialist reports)

How to Request Ministerial Intervention

Types of unique or exceptional circumstances	Examples of the different types of documents that could support claims (the types of documents will vary depending on your circumstances)
	<ul style="list-style-type: none"> • A statutory declaration outlining how you will suffer irreparable harm and continuing hardship because of your age or ill-health • A letter of support from your family members or from others who are willing to provide you with ongoing care while you are in Australia indicating the nature of the support and care that they are able to provide. <p>The Minister will check any claims you make about your home country, including your access to appropriate health care.</p>
<p>Exceptional economic, scientific, cultural or other benefits that would result from you being permitted to remain in Australia.</p> <p>Have you integrated well into the Australian community?</p>	<p>Documents demonstrating why you would be of exceptional benefit to Australia:</p> <ul style="list-style-type: none"> • Awards or industry or peer recognition; • Letters of support from relevant national bodies- professional, industry, cultural or sporting bodies; • Evidence of your English language standard such as the results of an International English Language Testing System (IELTS) language test; • Evidence of qualifications, for example degrees or membership of a professional body; • Evidence that your skills are recognised in Australia by a relevant Australian assessment authority; • Employer references showing you have been employed in your profession or trade; • Business or financial statements. <p>Documents showing participation in or membership of community organisations e.g. sporting clubs, volunteer work, cultural groups.</p>
<ul style="list-style-type: none"> • Circumstances not anticipated by relevant legislation; or 	<p>A letter from you, a legal advisor or another person explaining what these circumstances are.</p>

How to Request Ministerial Intervention

Types of unique or exceptional circumstances

- Clearly unintended consequences of legislation; or
- The application of relevant legislation leads to unfair or unreasonable results in your case.

You cannot be returned to your country of citizenship due to circumstances outside your control.

Examples of the different types of documents that could support claims (the types of documents will vary depending on your circumstances)

Documents supporting your claims:

- Evidence of identity - birth certificate or a genuine travel document issued in your name
- Evidence that you cannot get or you have been refused a new travel document by your country of citizenship or the country you usually live in.
- Country information that relates to you fears independent information showing you would face this kind of harm.
- Did not meet the criteria for the grant of any type of Protection Visa.

How to Request Ministerial Intervention

Section 48B - Made in the public interest to allow another Protection Visa application

If you have been refused a protection visa, you are not allowed to apply for another protection visa. Under Section 48B, the Minister can allow you to make another protection visa application.

You should meet the following criteria:

- Exceptional circumstances which justify consideration of plausible *new* information about your case or there should have been significant changes in circumstances, since your protection visa was refused.
- The plausible *new* information should not previously have been considered adversely by a decision maker within the Department, Tribunal, a previously s 48B request, or an ITOA;
- If you are in the community, you should be lawful, on a bridging visa, when making this request. People in detention can make this request;
- The new information means that you may now be a person whom Australia owes protection.

In your request to the Minister, you should explain:

- What are the significant changes in circumstances that have occurred after your protection visa refusal decision?
- What are the exceptional circumstances that justify the consideration of new information in your case?
- Why wasn't the new information available to decision makers at the time of your first application?
 - Was it not known to you at the time? Did the information not exist at the time?
 - Have conditions in your country changed since your case was decided?
 - Was there any family violence towards you which prevented you from disclosing this new information?
 - Did the actions of a migration agent prevent you from disclosing the new information?
 - Were you suffering torture and trauma effects which prevented you from disclosing this information? Medical or psychological reports should be submitted.
- How does the information show that Australia has obligations to protect you?

How to Request Ministerial Intervention

Frequently Asked Questions

How do I make a request to the Minister?

Requests must be made in writing and sent to either:

Postal address

Minister for Home Affairs
Minister for Immigration, Citizenship and
Multicultural Affairs
PO Box 6022
Parliament House
Canberra ACT 2600

Or

Email: minister@homeaffairs.gov.au

At the beginning of your request, write your name, date of birth, and a number identifying you with the Department or Tribunal: Your application ID (a ten-digit number), your file number (CLF year/4 digit number), your Tribunal or IAA file number if appropriate.

- Provide a copy of any previous tribunal decision;
- Provide your contact details including your address and phone number;
- Attach supporting documents and reports to provide evidence of your circumstances;
- Send certified copies rather than original documents;
- Keep a copy of the letter or email and all documents that you send;

Can I make more than one request for Ministerial Intervention?

Yes, there is no limit to the number of requests for Ministerial Intervention which you can make.

But repeat requests are less likely to be successful. The Minister considers that with each new request, the claims become less compelling

It is very important to include all relevant information in your first request to the Minister.

Can I request Ministerial Intervention if I am unlawful?

You can request Ministerial Intervention under s 417 or s 48B if you are in immigration detention.

If you are in the community, the Minister does not usually consider requests unless you are a lawful non-citizen, meaning you have a visa (including a Bridging Visa). The Minister expects a person requesting intervention to remain lawful until the request is finalised.

Can I apply for a Bridging Visa while waiting for the outcome of my request?

Yes, you can try to lodge an application for a Bridging Visa for the time you will be in the community waiting for the outcome of your request for Ministerial Intervention. It is not guaranteed you will get one. This is particularly so if it is not your first request for Ministerial Intervention.

How to Request Ministerial Intervention

Can I get other people to write a letter in support of my Ministerial Intervention request?

Yes, please see sample letter at the end of this factsheet.

It is important to provide as much detail as possible in a letter of support.

At the beginning of the letter, write the name of the person who is requesting Ministerial Intervention, their date of birth.

If you are writing a letter of support, outline the applicant's current situation and why you think there are:

- **s 417 request:** unique and exceptional circumstances; or
- **s 48B request:** exceptional circumstances justifying the consideration of new information in their case and/or significant changes in circumstances.

The type of issues that might be relevant include:

- How do you know the applicant?
- How long have you known the applicant?
- What activities has the applicant been involved with in Australia? (for example, cultural, sporting, political, voluntary activities).
- Why do you think the Minister should allow the applicant to remain in Australia?
- What is significant about the changes in the applicant's circumstances?
- Is the applicant of good character? What can they contribute to Australian society?

- What do you think about the prospect of the applicant being removed from Australia?
- Would this cause irreparable harm to someone? If so, to whom?
- Would the applicant's physical or mental health be adversely affected if the applicant was returned to their country of origin?
- If you are an employer of the applicant, what is your opinion of the applicant's work ethic and the quality of work performed? Can you give examples of how the applicant has contributed to your workplace or industry?

At the end of your letter, sign and date the letter. Provide your contact details including your address and phone number.

Useful Contacts

Legal Aid ACT

9.00am-4.00pm Monday-Friday

www.legalaidact.org.au

Phone: **1300 654 314**

Migration Agents Registration Authority (MARA)

www.mara.gov.au

Migration Clinic – Legal Aid ACT

www.legalaidact.org.au

Phone: **1300 654 314**

Email: migration@legalaidact.org.au

How to Request Ministerial Intervention

Example of a request seeking Ministerial Intervention under s 48B

[Contact details and date if sending by way of letter]

Dear Minister,

Request for Ministerial Intervention: [Your application ID (a ten digit number) and file number (CLF year/4 digit number)]

I would like to request Ministerial intervention under Section 48B of the *Migration Act 1958*.

I arrived in Australia on a [visa type] visa in [year]. Please find my Department refusal decision record [and my IAA decision] attached.

According to the guidelines, Ministerial Intervention requests can be made when there are exceptional circumstances which justify the consideration of new information or there have been significant changes in circumstances subsequent to a protection visa refusal decision. It could be argued that there are exceptional and/or significant changes in this case which warrant the Minister's intervention.

- *Explain exceptional circumstances and /or significant changes in circumstances in as much detail as possible including why the information is plausible and why you couldn't provide the information when your protection visa was being considered;*
- *Use the table and write headings if needed;*
- *Outline your changed circumstances;*
- *List the supporting documents you have enclosed in your letter;*
- *Explain the importance of each of these documents.*

I ask that you take the above into consideration when assessing my request for Ministerial Intervention and am grateful for this consideration.

Yours sincerely,

[Signature]

[Full name].

How to Request Ministerial Intervention

Example of a request seeking Ministerial Intervention under s 417

[Contact details and date if sending by way of letter]

Dear Minister,

Request for Ministerial Intervention: [Your application ID (a ten digit number), file number (CLFyear/4 digit number), and Tribunal file number.]

I would like to request Ministerial Intervention under Section 417 of the *Migration Act 1958*.

According to the guidelines, Ministerial Intervention requests can be made when there are unique and exceptional circumstances in a case. It could be argued that there are unique and exceptional circumstances in this case which warrant the Minister's intervention.

I arrived in Australia on a [visa type] visa in [year]. Please find my Tribunal decision record attached.

- *Explain unique and exceptional circumstances in as much detail as possible;*
- *Use the table and write headings if needed;*
- *Outline your connections to the community;*
- *Outline your changed circumstances;*
- *List the supporting documents you have enclosed in your letter;*
- *Explain the importance of each of these documents.*

[List reasons why there are 'compelling and compassionate circumstances' in your case]

I ask that you take the above into consideration when assessing my request for Ministerial Intervention and am grateful for this consideration.

Yours sincerely,

[Signature]

[Full name]

How to Request Ministerial Intervention

Example of request seeking Ministerial Intervention under s 48B

[Contact details and date if sending by way of letter]

Dear Minister,

Request for Ministerial Intervention: [Your application ID (a ten digit number), file number (CLFyear/4 digit number) and Tribunal file number]

I would like to request Ministerial Intervention under Section 48B of the *Migration Act 1958*.

I arrived in Australia on a [visa type] visa in [year]. Please find my Department refusal decision record [and my IAA decision] attached.

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- *Explain exceptional circumstances and/or significant changes in circumstances in as much detail as possible including why the information is plausible and why you couldn't provide the information when your protection visa was being considered;*
- *Use the table and write headings if needed;*
- *Outline your connections to the community;*
- *Outline your changed circumstances;*
- *List the supporting documents you have enclosed in your letter;*
- *Explain the importance of each of these documents.*

I ask that you take the above into consideration when assessing my request for Ministerial Intervention and am grateful for this consideration.

Yours sincerely,

[signature]

[Full name]

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This factsheet was originally developed by the Refugee Advice & Casework Service Sydney (RACS) (www.racs.org.au).

This factsheet is a guide only and is not legal advice. While due care has been taken to ensure the accuracy of the material contained in this factsheet, Legal Aid ACT and the Refugee Advice & Casework Service Sydney cannot take responsibility for any errors or omissions.

Complaints & suggestions: If you have any complaints or suggestions about our services, please write to the Chief Executive Officer at our postal address.

Interpreter: If you need an interpreter, please contact Translating and Interpreting Service (TIS) on 131 450.

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Web www.legalaiddACT.org.au
 [@legalaiddact](https://www.facebook.com/legalaiddact)